



Department of Veterans Affairs

Financial Policy

Volume XII

Debt Management

Chapter 3

Freedom of Information Act Fees

Approved:

A handwritten signature in black ink, appearing to read "Ed J. Murray", is written over a horizontal line.

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Date

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0301 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures relating to the calculation and collection of fees associated with the implementation of the Freedom of Information Act (FOIA), (5 U.S.C. § 552) which was enacted by Congress to give the American public greater access to Federal information. FOIA authorizes the release of Federal information, with some restrictions, from agency records, files, reports and other documents in VA's custody. General information about requesting a FOIA can be found by accessing the [VA FOIA Service](#) webpage. As authorized under [38 C.F.R. § 1.561](#), VA will generally provide FOIA information to requesters without a charge unless the anticipated fee for processing the request exceeds \$25. VA must respond to a FOIA request within 20 business days per [38 C.F.R § 1.553a](#).

0302 REVISIONS

Section	Revision	Office	Reason for Change	Effective Date
Various	Reformatted to new policy format and completed 5 year review.	OFP (047G)	Reorganized chapter layout	August 2017
Section 0304	Updated roles and responsibilities	OFP (047G)	Enhance reader understanding.	August 2017
030501, C	Added new reference to include Handbook 6300.3.	OFP (047G)	Missing Reference	August 2017
Section 0305	Added sub-headings 030501 FOIA Fees, 030502 Billing and Payment, and 030503 Delinquencies	OFP (047G)	Enhance readability	August 2017
Appendix A	Eliminated	OFP (047G)	Incorporated into policy sections	August 2017

0303 DEFINITIONS

Commercial Use Requests - A request that seeks information for a use or purpose that furthers the trade or profit interests of the requester.

Direct Costs - Expenditures which VA incurs in responding to a FOIA request. Direct costs include the salary and calculated fringe benefit costs of the employee performing the work, and cost of operating any VA equipment. For more information about Direct Costs related to the calculation of FOIA Fees, please refer to [38 C.F.R. § 1.555\(c\) \(2\)](#).

Indirect Costs - Overhead expenses such as costs of space, heating, and/or lighting of the facility in which the records are stored. Indirect Costs should not be included in direct costs

calculations of FOIA Fees. For more information about Indirect Costs related to the calculation of FOIA Fees, please refer to 38 C.F.R. §1.561(b)(3).

Notice of Indebtedness - Written communication sent by VA to the debtor explaining the details of the debt along with the debtor's due process rights, including the right to request a hearing and waiver of the debt. The notice advises the debtor of the timing of repayment and repayment options for paying off the debt, possible course(s) of action to be taken by VA, and the potential effect of added interest and other late payment charges to the debt.

0304 ROLES AND RESPONSIBILITIES

Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chief Accountants and Other Key Officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

The Assistant Secretary for Information and Technology (OI&T) is VA's designated Agency Chief FOIA Officer (ACFO) tasked with monitoring FOIA implementation throughout VA. The ACFO recommends to the head of VA such adjustments to practices and policies as may be necessary and prepares reports on VA's performance in implementing the FOIA. VA's Records Management Service, a staff within OI&T, is responsible for implementing the provisions of Executive Order (EO) 13392 and the February 2009 Presidential Memorandum on FOIA throughout the agency, in conjunction with other VA offices that administer and manage FOIA requests.

FOIA Officers should be familiar with laws and regulations concerning the release of information. FOIA officers review initial requests for records, make determinations to grant or deny the requests and ensures that responses to FOIA requests include required information. The roles and responsibilities for a FOIA Officer are fully defined in VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act

VA's FOIA Requester Service Centers (RSC) and FOIA Public Liaisons assist FOIA requesters with inquiries about the FOIA process in general and their FOIA requests in particular. A listing of VA's RSCs can be found on the VA FOIA Home Page, and the listing of FOIA Public Liaison Officers can be found on this link.

0305 POLICIES

030501 FOIA Fees

- A. There is no initial fee to file a FOIA request.
- B. When a requester fails to provide sufficient information for VA to determine if a fee is appropriate, VA may defer consideration of the request in order to allow the requester time to submit any necessary supplemental or clarifying information.
- C. VA Handbook 6300.3 stipulates that fees will be charged for responding to FOIA requests.

- D. Per 38 C.F.R. § 1.555(b)(2), and 38 C.F.R. § 1.561, VA's fee for processing a FOIA request and releasing material(s) are calculated by the FOIA Officer. The FOIA Officer uses guidance from 38 C.F.R. § 1.555(b), the VA FOIA Service FOIA Fee Information webpage, OMB Fee Guidelines, and the agency's direct reasonable operating costs of providing FOIA services to calculate the fee assessment. VA will also charge the requester a fee for any special handling or services performed in connection with processing the request. The following table summarizes chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
Commercial Use	Yes	Yes	Yes.
Educational Institution	No	No	Yes (100 pages free).
Non-Commercial Scientific Institution	No	No	Yes (100 pages free).
News Media	No	No	Yes (100 pages free).
All other	Yes (2 hours free)	No	Yes (100 pages free).

- E. If the estimated fee for the FOIA request is less than \$25, VA will automatically waive the fee. Fees for a FOIA request may also be waived, in accordance with 38 C.F.R. § 1.561(n) when the requester can show the disclosure of the requested information is in the public interest and will contribute significantly to public understanding of the Federal Government's operations and activities, and is not primarily in the commercial interest of the requester. The Program Director of the office answering the FOIA request will approve or deny fee waiver requests. For further guidance on fee waivers for FOIA charges, please refer to the U.S. Dept. of Justice Freedom of Information Act - Fees and Fee Waivers and VA FOIA Service FOIA Fee Information.
- F. FOIA/Privacy Act Officers utilize FOIA express software, to track requests, assist with fee estimates, fee waivers, and generate invoices for the requests.
- G. VA will advise the requester, in writing, of the approved estimated fee amount.
- H. If the estimated fee amount exceeds \$250.00, or if the requester has failed to pay a past FOIA fee, in a timely manner, the FOIA Officer may require the requester to pay the FOIA fee for the current FOIA request before beginning to process the request. Further information on the invoicing and collection of advance fees may be found at U.S. Dept. of Justice Freedom of Information Act - Fees and Fee Waivers.
- I. If the FOIA requester is willing to pay the estimated fee, he or she will either sign a fee agreement document or reply via email to the estimated fee notification indicating agreement to pay the fee.
- J. Upon receiving the requestor's agreement to pay the fee, VA will process the request, disseminate the FOIA information.

- K. If the requested information results in an “unsuccessful search”, VA may still collect fees for the request, if the records are found but cannot be disseminated because the material is related to types of information that can be withheld under any of nine exemptions or three law enforcement exclusions. A list of the nine exemptions and three law enforcement exclusions can be found on the U.S. Dept. of Justice FOIA webpage. Further information on the collection of FOIA fees due to unsuccessful searches can be found within 38 C.F.R. § 1.561(b)(9).
- L. Should VA not respond to a FOIA request within the 20 day time limit, VA may still charge fees for requests if:
1. A voluminous amount of pages were necessary to respond to the request.
 2. Either VA or a court has determined that exceptional circumstances, as defined by Title 5 U.S.C. § 552 (a)(6)(B)(ii) exist.
 3. VA provided a timely written notice of the circumstances that caused the delay.

Further information on exceptions to charging FOIA fees can be located at 5 U.S.C. § 552(a)(6)(B)(ii).

030502 Invoices and Payments

- A. Invoices will be sent when the information satisfying the FOIA request is transmitted to the requestor, unless a waiver has been granted.
- B. At a minimum invoice will include:
1. Name of debtor;
 2. Amount of the debt ;
 3. The location to which payments should be remitted;
 4. Payment terms and conditions including instructions to the requester on how to remit payment (i.e., either check or money order, made payable to the Treasury of the United States in accordance with Title 38 C.F.R. § 1.561(a)); and
 5. A statement that According to Title 38 C.F.R. § 1.561(a)), payment of FOIA fees is due to VA within 30 calendar days of the date on the invoice.
- C. When payments are received the program office that responded to the FOIA request is responsible for collecting and depositing fees with the appropriate finance office.
- D. The program office depositing the collected fees must ensure that the payment is identified as a FOIA payment.

030503 Delinquencies

- A. If payment is not received within 30 days of the invoice date, the account will be considered delinquent.
- B. VA will initiate collection procedures against the requester's delinquent account.
- C. VA will advise the requester of his or her due process rights by sending out a Notice of Indebtedness (NOI).
- D. At a minimum, the initial NOI will contain the following information:
 - 1. Amount of the debt;
 - 2. Reason the debt occurred and the associated time period or date of the debt;
 - 3. Debtor's right to a copy of the debt and supporting documents;
 - 4. Debtor's rights and the remedies available such as; the right to dispute the existence or amount of a debt, the right to request a waiver or a hearing, the right to appeal a decision, and the right to request a repayment plan.
 - 5. A statement that a response from the Debtor is required within 30 days to prevent adverse actions;
 - 6. VA's intent to charge interest, administrative costs and penalty charges as appropriate to the type of debt, when the debt becomes delinquent; and
 - 7. VA's intent to refer the debt for enforced collection actions such as, referral to consumer reporting agencies, private collection agencies, Treasury Offset Program/Cross-Servicing or for enforced collection.
- E. Subsequent NOI's will be sent at 30-day intervals.
- F. Subsequent letters will include and emphasize to the debtor the consequences of not paying the debt, such as referral to consumer reporting agencies, private collection agencies, Treasury Offset Program/Cross-Servicing or for enforced collection.
- G. In accordance with threshold amounts established by the Administration or staff office, the Chief of the Finance Activity will not send additional letters when a determination is made that it is not cost effective to send more than one letter and further attempts to collect the debt will not be pursued.
- H. VA will suspend collection action if the requester seeks a waiver of the fee or disputes the debt and/or amount. Collection actions will resume when the waiver request or dispute is resolved. Further information on VA's financial policies and procedures relating to the

suspension of collection activities on debts can be found in VA Financial Policies and Procedures on Suspension of Collection Actions.

0306 AUTHORITIES AND REFERENCES

FOIA Improvement Act of 2016

5 U.S.C. § 552, Public information; agency rules, opinions, orders, records, and proceedings

28 U.S.C. § 2401-16, Statute of Limitations - Time for Commencing Action Against the United States

31 C.F.R. Parts 901-904, Federal Claims Collection Standards

38 C.F.R. §§ 1.550–1.562 Release of Information from Department of Veterans Affairs Records Other than Claimant Records

Freedom of Information Act Fee Schedules

Executive Order 13392, "Improving Agency Disclosure of Information"

Presidential Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act, February 21, 2009

United States Department of Justice Guide to the Freedom of Information Act

VA FOIA Information Website

FOIA Requester's Reference Guide

VA Directive 6300, Records and Information Management, dated February 26, 2009

VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act, dated February 12, 1998

OMB Fee Guidelines

0307 RESCISSIONS

None

0308 QUESTIONS

Questions concerning these financial policies and procedures should be directed to the specific POC's listed below and formatted as follows using the group email listed next to each organization. Do not use proper names.

VHA	VHA CFO Accounting Policy (10A3A) (Outlook)
VBA	VAVBAWAS/CO/OPERATIONS (Outlook)
NCA	NCA Finance Group (Outlook)
VA FSC FOIA	FOIA, VAFSC (Outlook)
OI&T	VA Privacy and Records Management All Staff
VACO FOIA Service	<u>VACO FOIA Service</u>
VACO Privacy Service	<u>VACO Privacy Service</u>
All Others	OFP Accounting Policy (Outlook)